

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 364

INTRODUCER: Regulated Industries Committee and Senator Fasano

SUBJECT: Instant Bingo Tickets

DATE: March 25, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brink</u>	<u>Imhof</u>	<u>RI</u>	Favorable/CS
2.	<u>Maclure</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill authorizes the dispensing of instant bingo tickets by electronic or mechanical devices. The bingo devices must be capable of recording each ticket dispensed, the number of coins or amount of money received for each ticket, the total number of tickets dispensed, and the total amount of money received for all tickets dispensed.

The bill specifies that electronic or mechanical instant bingo devices are not slot machines under ss. 849.15 and 849.16, F.S.; coin-operated amusement machines as defined in s. 212.02(24), F.S.; or amusement games or machines under s. 849.161, F.S. The bill also specifies that electronic and mechanical instant bingo machines are exempt from sales taxation as coin-operated amusement machines under s. 212.05(1)(h), F.S., and as vending machines under s. 212.0515, F.S.

The bill substantially amends section 849.0931, Florida Statutes.

II. Present Situation:

Exceptions to Gambling Prohibition; Bingo

Chapter 849, F.S., contains specific exceptions to the general gambling prohibition and authorizes certain gambling activities, such as cardrooms,¹ bingo,² penny-ante poker,³ arcade amusement games, and amusement games and machines.⁴ Specifically, s. 849.0931, F.S., authorizes the playing of charitable bingo.

Bingo was authorized in 1967 by the Legislature to provide charitable, nonprofit, and veterans' organizations a way to raise money for their charitable projects and activities. No statutory provision exists for statewide enforcement or interpretation of the bingo law. Enforcement of the law is the responsibility of local law enforcement agencies. Several counties have passed their own bingo ordinances to address problems associated with the game.

Section 849.0931, F.S., authorizes bingo games to be conducted for money by certain organizations under narrowly prescribed parameters. Pursuant to s. 849.0931(1)(c) and (4), F.S., organizations that are authorized to conduct bingo games include:

- Charitable, nonprofit, and veterans' organizations which are defined as tax-exempt under s. 501(c) of the Internal Revenue Code of 1954, or s. 528 of the Internal Revenue Code of 1986; which are engaged in charitable, civic, community, benevolent, religious, or scholastic works or similar activities; and which have been in existence and active for at least three years; and
- Condominium associations, cooperative associations, homeowners' associations, mobile home owners' associations, and a group of residents of a mobile home park or recreational vehicle park.

These organizations must be directly involved in the operations of the bingo game and may not act merely as sponsors. Members of the organization must conduct the game and cannot be compensated in any way for this role. In addition, the organization that conducts the game must be "located in the county, or within a 15-mile radius of, where the bingo game or instant bingo is located."⁵ The property where bingo or instant bingo games are held must be owned or leased by the authorized organization or owned by the charitable organization that will benefit from the proceeds of the game.⁶

Section 849.0931, F.S., defines how bingo proceeds, which remain after prizes have been awarded, can be used. Charitable, nonprofit, and veterans' organizations must donate the proceeds to the organizations' listed endeavors. Net proceeds generated from bingo games conducted by condominium associations, cooperative associations, homeowners' associations, mobile home owners' associations, and a group of residents of a mobile home park or recreational vehicle park, however, must be donated to a charitable tax-exempt organization or returned to the players in the form of prizes. In addition, these associations have the option of carrying over the proceeds for use as

¹ Section 849.086, F.S.

² Section 849.0931, F.S.

³ Section 849.085, F.S.

⁴ Section 849.161, F.S.

⁵ Section 849.0931(9), F.S.

⁶ Section 849.0931(11), F.S.

prize money in subsequent games, with the proviso that players cannot be charged to participate in the subsequent games until these excess proceeds are exhausted.⁷

The statute also establishes restrictions on bingo jackpots. No jackpot may exceed the value of \$250 in actual money or its equivalent. There cannot be more than three jackpots on any one day of play, and all other game prizes may not exceed \$50. An organization cannot conduct bingo more than two days per week.⁸

Participants in bingo games must be at least 18 years old. The organization that is conducting the game “may refuse entry to any person ... but such refusal of entry shall not be on the basis of race, creed, color, religion, sex, national origin, marital status, or physical handicap.”⁹

Instant Bingo

The Legislature authorized instant bingo in 2007. Instant bingo is a form of bingo that is played at the same location as bingo, using tickets by which a player wins a prize by opening and removing a cover from the ticket to reveal a set of numbers, letters, objects, or patterns, some of which are predetermined to be winners.¹⁰ Instant bingo tickets are also known informally as “pull-tabs.”

Section 849.0931(13), F.S., prescribes the following regulations for instant bingo tickets:

- The tickets must be sold at the price printed on the ticket by the manufacturer, which may not exceed \$1.
- The sets of numbers, letters, objects, or patterns that have been pre-designated by the manufacturer as winning combinations for a deal of instant bingo tickets must be posted before the sale of any tickets from that deal.
- Each instant bingo ticket in a deal must bear the same serial number, and there may not be more than one serial number in each deal. Serial numbers printed on a deal may not be repeated by the manufacturer on the same form for three years.
- The serial number for each deal must be clearly and legibly placed on the outside of each deal’s package, box, or other container.
- Instant bingo tickets, rules of play, recordkeeping, and reporting for instant bingo games manufactured, sold, or distributed in Florida must comply with the standards on pull-tabs of the North American Gaming Regulators Association.¹¹

An instant bingo ticket manufactured, sold, or distributed in Florida must meet the following criteria:

- Be manufactured so that it is not possible to identify whether it is a winning or losing ticket until it has been opened by the player.
- Be manufactured using at least a two-ply paper stock construction so that the ticket is opaque.
- Have the form number, the deal’s serial number, and the name or logo of the manufacturer conspicuously printed on the face or cover of the ticket.

⁷ Section 849.0931(2)-(4), F.S.

⁸ Section 849.0931(5)-(7), F.S.

⁹ Section 849.0931(10), F.S.

¹⁰ Section 849.0931(1)(f), F.S.

¹¹ Section 849.0931(13), F.S.

- Have a form of winner protection that allows the organization to verify, after a ticket has been played, that the winning ticket presented for payment is an authentic winning ticket for the deal in play. The manufacturer is required to provide a written description of the winner protection verification with each deal of tickets.¹²

Each manufacturer and distributor that sells or distributes instant bingo tickets in Florida to charitable, nonprofit, or veterans' organizations must prepare an invoice that contains the following:

- Date of sale;
- Form number and the serial number of each deal sold;
- Number of instant bingo tickets in each deal sold;
- Name of distributor or organization to whom each deal is sold; and
- Price of each deal sold.¹³

The distributor or manufacturer is required to maintain the information contained in the invoice for three years. The invoice or a true and accurate copy must be kept on the premises where any deal is stored or played.¹⁴ Although bingo halls are required to keep records of instant bingo sales, no regulatory agency is assigned to check them.¹⁵

Attorney General Opinion on Electronic Instant Bingo Devices

Florida Attorney General McCollum has opined¹⁶ that dispensing instant bingo tickets through an electronic machine would violate s. 849.15, F.S., as an unlawful slot machine, because the machine would dispense an object that would result in the user becoming eligible for a thing of value by chance.¹⁷ It may be argued, however, that dispensing an instant bingo ticket by an electronic device is distinguishable from a slot machine. By statutory definition, a machine or device is a slot machine if it is adapted for use in such a way that, as a result of insertion of any piece of money, coin, or other object, such machine causes the user, by reason of chance or other unpredictable measure, to receive or become entitled to a thing of value or to secure additional chances to use the machine.¹⁸ In contrast, it may be argued, an instant bingo machine would dispense a ticket after insertion of a piece of money, coin, or other object. The machine itself would contain no element of chance or randomness. The machine itself would not cause the user, by result of chance, to become eligible for a thing of value, but rather would simply dispense the ticket.

In the opinion, the Attorney General noted the absence of specific statutory authority for dispensing of instant bingo tickets by machine:

I acknowledge that the Legislature has authorized the conduct of instant bingo by certain organizations. However, nothing in Chapter 849, Florida Statutes,

¹² Section 849.0931(13)(f), F.S.

¹³ Section 849.0931(13)(g), F.S.

¹⁴ Section 849.0931(13)(h), F.S.

¹⁵ Section 849.0931(14), F.S., provides that any organization or person who willfully or knowingly violates any provision of this section commits a misdemeanor of the first degree. For a second or subsequent offense, the organization or other person commits a felony of the third degree.

¹⁶ Opinions of the Attorney General are not law and are not binding in a court of law. Instead, the opinions are advisory in nature. *Abreau v. Cobb*, 670 So. 2d 1010, 1012 (Fla. 3d DCA 1996).

¹⁷ Op. Att'y Gen. Fla. 2008-35 (July 8, 2008).

¹⁸ Section 849.16, F.S.

addresses the automated sale of these tickets by a machine. Chapter 24, Florida Statutes, the “Florida Public Education Lottery Act,” contains a legislatively devised plan for the use of “instant ticket vending machines” by the Department of the Lottery in conducting the state lottery. . . . In the absence of any statement by the Legislature that would indicate that it contemplated the automated sale of instant bingo tickets, I cannot conclude that any machines used to dispense the tickets would fall outside the scope of sections 849.15 and 849.16, Florida Statutes. The conduct of bingo, or instant bingo, outside the very limited scope of the authorization contained in Chapter 849, Florida Statutes, is illegal.¹⁹

III. Effect of Proposed Changes:

The bill authorizes the dispensing of instant bingo tickets by electronic or mechanical devices. In a newly created paragraph (i) of s. 849.0931(13), F.S., the bill specifies that the act of dispensing instant bingo tickets through such a device is subject to the other provisions of that statute regulating bingo and instant bingo. The bill also requires that the electronic device be capable of recording each ticket dispensed, the number of coins or amount of money received for each ticket, and totals of each for all tickets dispensed.

Under s. 849.0931(1)(f), F.S., instant bingo is played only at the same locations where bingo is played. Accordingly, the electronic or mechanical devices that dispense instant bingo tickets would be placed only in the locations where bingo is played.

The bill specifies that electronic and mechanical instant bingo machines are not considered slot machines under ss. 849.15 and 849.16, F.S.; coin-operated amusement machines as defined in s. 212.02(24), F.S.; or amusement games or machines under s. 849.161, F.S. It also provides that these machines are not subject to taxation as coin-operated amusement machines under s. 212.05(1)(h), F.S., or as vending machines under s. 212.0515, F.S.

The bill provides a July 1, 2010 effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁹ Fla. AGO 2008-35 (July 8, 2008).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 3, 2010:

The committee substitute differs from SB 364 as follows:

- It further amends s. 893.0931(13), F.S., to clarify that electronic and mechanical instant bingo machines are exempt from taxation as coin-operated amusement machines under s. 212.05(1)(h), F.S., and as vending machines under s. 212.0515, F.S.; and
- It further amends s. 893.0931(13), F.S., to clarify that electronic and mechanical instant bingo machines are not considered slot machines under ss. 849.15 and 849.16, F.S.; coin-operated amusement machines as defined in s. 212.02(24), F.S.; or amusement games or machines under s. 849.161, F.S.

B. Amendments:

None.